

# MAYOR & COUNCIL AGENDA COVER SHEET

**MEETING DATE:**

March 1, 2004

**CALL TO PODIUM:**

**Fred Felton**  
**Assistant City Manager**

**RESPONSIBLE STAFF:**

**Fred Felton**  
**Assistant City Manager**

**AGENDA ITEM:**

(please check one)

	Presentation
	Proclamation/Certificate
	Appointment
	Public Hearing
	Historic District
	Consent Item
	Ordinance (Introduction)
	Resolution
X	Policy Discussion
	Work Session Discussion Item
	Other:

**PUBLIC HEARING HISTORY:**

(Please complete this section if agenda item is a public hearing)

Introduced	1/12/04
Advertised	1/14/04
	1/28/04
Hearing Date	2/9/04
Record Held Open	
Policy Discussion	

**TITLE:**

A Consolidated Policy Discussion on Five Pending Ordinances to Further Regulate Smoking in Eating and Drinking Establishments

**SUPPORTING BACKGROUND:**

On August 4, 2003, the Mayor and City Council held public hearings on two ordinances concerning smoking. The first ordinance would adopt (via Tillie Frank) all Montgomery County smoking regulations including the recent ban on smoking in eating and drinking establishments. The second ordinance would repeal all existing City smoking regulations. The record on this ordinance closed on December 10, 2003 but a vote has not been taken.

During a subsequent work session, the Mayor and City Council directed staff to prepare City ordinances that offer various alternatives.

On February 9, 2004, the Mayor and City Council held a consolidated public hearing on three alternative ordinances to regulate smoking in eating and drinking establishments.

Option I is essentially a mirror image of the Montgomery County smoking ban; however, it would be administered and enforced by City staff. Like the County legislation it would not apply to private clubs or outdoor seating areas.

Option II is very similar to the smoking ban recently passed by Montgomery County; however, restaurants that currently have completely enclosed smoking areas with separate ventilation systems, would be granted a year to phase out smoking in their establishment.

Option III is very similar to the Howard County model. This option would allow existing and future restaurants to designate a smoking area if it is completely enclosed with a separate ventilation system. Additionally, a designated smoking area under this option can not be located in an area that patrons must pass through to reach the restrooms or be seated in a non smoking area.

The record on Option I, II, and III closed at 5:00 p.m. on February 25, 2004.

**DESIRED OUTCOME:**

Hold policy discussion, and vote on the various alternatives.

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO AMEND CHAPTER 18A OF THE  
CITY CODE ENTITLED "SMOKING AND TOBACCO PRODUCTS  
PLACEMENT" SECTION 18A-2 ENTITLED "SMOKING  
PROHIBITED IN CERTAIN AREAS" SECTION 18A-3 ENTITLED  
"EXCEPTIONS", SECTION 18A-6 ENTITLED "DESIGNATED SMOKING  
AREAS" AND SECTION 18A-7 ENTITLED "SMOKING IN EATING AND  
DRINKING ESTABLISHMENTS" SO AS TO PROHIBIT  
SMOKING IN EATING AND DRINKING ESTABLISHMENTS  
IN THE CITY, EXCEPT PRIVATE CLUBS AND FURTHER  
TO RENUMBER CERTAIN SUBSECTION NUMBERS

BE IT ORDAINED, by the Mayor and City Council of the City of Gaithersburg,  
Maryland, in public meeting assembled that Chapter 18A of the City Code, Section 18A-2, 18A-  
3, 18A-6 and 18A-7 are hereby amended to read as follows:

**CHAPTER 18A. SMOKING AND TOBACCO PRODUCTS PLACEMENT**

\* \* \* \* \*

**Sec. 18A-2. Smoking prohibited in certain areas.**

A person must not smoke in any:

- |     |   |   |   |   |   |   |   |   |
|-----|---|---|---|---|---|---|---|---|
| (1) | * | * | * | * | * | * | * | * |
| (2) | * | * | * | * | * | * | * | * |
| (3) | * | * | * | * | * | * | * | * |
| (4) | * | * | * | * | * | * | * | * |
| (5) | * | * | * | * | * | * | * | * |
| (6) | * | * | * | * | * | * | * | * |
| (7) | * | * | * | * | * | * | * | * |

- (8) Public areas of a retail store, eating and drinking establishment, bank, factory or  
any other private business, except:

[a. An eating and drinking establishment, except as provided in section 18A-7  
of this chapter:]

[b] a. \* \* \* \*

[c] b. \* \* \* \*

[d] c. \* \* \* \*

- |      |   |   |   |   |   |   |   |   |
|------|---|---|---|---|---|---|---|---|
| (9)  | * | * | * | * | * | * | * | * |
| (10) | * | * | * | * | * | * | * | * |
| (11) | * | * | * | * | * | * | * | * |
| (12) | * | * | * | * | * | * | * | * |

### Sec. 18A-3. Exceptions.

Smoking is permitted:

- (1) \* \* \*
- (2) \* \* \*
- (3) \* \* \*
- (4) \* \* \*
- (5) \* \* \*
- (6) \* \* \*
- (7) \* \* \*
- (8) \* \* \*

(9) In the bar or dining area of a club as the term "club" is defined in the state alcoholic beverage law and the club has an alcoholic beverage license issued to private clubs under the state alcoholic beverages law which allows consumption of alcoholic beverages on the premises.

### Sec. 18A-6. Designated smoking areas.

The person in charge of any area specified in section 18A-2 may designate separate areas where smoking is permitted; provided that:

- (1) An area must not be designated as a smoking area if smoking in that area is prohibited by this Chapter 18A; by any other law, ordinance or regulation or by a fire marshal.
- (2) \* \* \*
- (3) \* \* \*
- (4) \* \* \*

### Sec. 18A-7. Smoking in eating and drinking establishments.

(a) *Definitions.* In this section, the following words have the meaning indicated:

- (1) "Bar" means an indoor, enclosed area where the primary activity is the service of alcoholic beverages and where the service of food is only incidental to the service of alcoholic beverages.
- (2) "Eating and drinking establishment" means a food and drink service facility or establishment open to the public and regulated under Chapter 18A. Eating and drinking establishments under this section are not clubs as defined under the state alcoholic beverage control laws.
- (3) "Enclosed" means separated by walls or partitions and under roof.
- (4) "Indoor" means covered by a roof and enclosed.
- (5) "Private function" means an event in an enclosed area to which entry is not available to the general public but only to those whom the sponsor of the event invites.

"Private function" does not mean an event held by a private club or association to which members of the general public are invited.

(b) *Applicability*

(1) This section applies to eating and drinking establishments [if the total seating capacity of all non-bar areas is fifty (50) or more].

(2) This section does not apply to any area of an eating and drinking establishment that is: [a bar; or] being used exclusively for a private function or is a private club as defined under the state alcoholic beverage control laws which has a private club license for consumption on premises.

[(c) *Nonsmoking area required.* A person who operates an eating and drinking establishment must designate a contiguous, nonsmoking area that is at least fifty (50) percent of the total seating area of that part of the establishment that is not: a bar; or being used exclusively for a private function].

[(d)] (c) *Notice.* Any person who operates an eating and drinking establishment subject to this section must:

(1) Post conspicuously at each entrance a sign stating that [a nonsmoking area is available;] smoking is not permitted on premises.

[(2)] (2) Ask whether each patron wants to be seated in the smoking or nonsmoking area;]

[(3)] (2) Refuse to seat or serve a person who smokes [in the nonsmoking area]; and

[(4)] (3) Ask a person who smokes [in a nonsmoking area] on the indoor premises to leave the establishment if the person continues to smoke after proper warning.

\_\_\_[(e)] (d) *Prohibition.* A person must not smoke in:

(1) [An area that is designated for nonsmoking under this section]; Any portion of the indoor premises of an eating and drinking establishment; or

(2) Any restroom that is open to customers.

[(f)] (e) *Enforcement and penalty.*

(1) A person who operates an eating and drinking establishment in violation of any provision of this section may be punished pursuant to the provisions of section 18A-12.

(2) A person who smokes in a nonsmoking area in violation of this section may be punished pursuant to the provisions of section 18A-12.

\* \* \* \* \*

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2004 by the City Council of Gaithersburg, Maryland.

\_\_\_\_\_  
SIDNEY A. KATZ, MAYOR and  
President of the Council

DELIVERED to the Mayor of the City of Gaithersburg, Maryland this \_\_\_\_\_ day of \_\_\_\_\_, 2004. APPROVED by the Mayor of the City of Gaithersburg, this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
SIDNEY A. KATZ, MAYOR

THIS IS TO CERTIFY that the foregoing ordinance as adopted by the City Council of Gaithersburg, in public meeting assembled, on the \_\_\_\_\_ day of \_\_\_\_\_, 2004, and that the same was approved by the Mayor of the City of Gaithersburg on the \_\_\_\_\_ day of \_\_\_\_\_, 2004. This \_\_\_\_\_ day of \_\_\_\_\_, 2004. This Ordinance will become effective on the \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
David B. Humpton, City Manager

**Boldface**

Underlining

[Single boldface brackets]

Double underlining

[[Double boldface brackets]]

\* \* \*

*Heading or defined term.*

*Added to existing law by original bill.*

*Deleted from existing law by original bill.*

*Added by Amendment.*

*Deleted from existing law or the bill by amendment.*

*Existing law unaffected by bill.*

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO AMEND CHAPTER 18A OF THE  
CITY CODE ENTITLED "SMOKING AND TOBACCO PRODUCTS  
PLACEMENT" SECTION 18A-2 ENTITLED "SMOKING  
PROHIBITED IN CERTAIN AREAS" SECTION 18A-3 ENTITLED  
"EXCEPTIONS", SECTION 18A-6 ENTITLED "DESIGNATED SMOKING  
AREAS" AND SECTION 18A-7 ENTITLED "SMOKING IN EATING AND  
DRINKING ESTABLISHMENTS" SO AS TO PROHIBIT  
SMOKING IN EATING AND DRINKING ESTABLISHMENTS  
IN THE CITY, EXCEPT PRIVATE CLUBS AND FURTHER  
TO RENUMBER CERTAIN SUBSECTION NUMBERS

BE IT ORDAINED, by the Mayor and City Council of the City of Gaithersburg,  
Maryland, in public meeting assembled that Chapter 18A of the City Code, Section 18A-2, 18A-  
3, 18A-6 and 18A-7 are hereby amended to read as follows:

**CHAPTER 18A. SMOKING AND TOBACCO PRODUCTS PLACEMENT**

\* \* \* \* \*

**Sec. 18A-2. Smoking prohibited in certain areas.**

A person must not smoke in any:

- |     |   |   |   |   |   |   |   |   |
|-----|---|---|---|---|---|---|---|---|
| (1) | * | * | * | * | * | * | * | * |
| (2) | * | * | * | * | * | * | * | * |
| (3) | * | * | * | * | * | * | * | * |
| (4) | * | * | * | * | * | * | * | * |
| (5) | * | * | * | * | * | * | * | * |
| (6) | * | * | * | * | * | * | * | * |
| (7) | * | * | * | * | * | * | * | * |

- (8) Public areas of a retail store, eating and drinking establishment, bank, factory or  
any other private business, except:

[a. An eating and drinking establishment, except as provided in section 18A-7  
of this chapter:]

[b] a. \* \* \* \*

[c] b. \* \* \* \*

[d] c. \* \* \* \*

- |      |   |   |   |   |   |   |   |   |
|------|---|---|---|---|---|---|---|---|
| (9)  | * | * | * | * | * | * | * | * |
| (10) | * | * | * | * | * | * | * | * |
| (11) | * | * | * | * | * | * | * | * |
| (12) | * | * | * | * | * | * | * | * |

### Sec. 18A-3. Exceptions.

Smoking is permitted:

- |     |   |   |   |   |   |   |   |   |
|-----|---|---|---|---|---|---|---|---|
| (1) | * | * | * | * | * | * | * | * |
| (2) | * | * | * | * | * | * | * | * |
| (3) | * | * | * | * | * | * | * | * |
| (4) | * | * | * | * | * | * | * | * |
| (5) | * | * | * | * | * | * | * | * |
| (6) | * | * | * | * | * | * | * | * |
| (7) | * | * | * | * | * | * | * | * |
| (8) | * | * | * | * | * | * | * | * |

(9) In the bar or dining area of a club as the term "club" is defined in the state alcoholic beverage law and the club has an alcoholic beverage license issued to private clubs under the state alcoholic beverages law which allows consumption of alcoholic beverages on the premises.

### Sec. 18A-6. Designated smoking areas.

The person in charge of any area specified in section 18A-2 may designate separate areas where smoking is permitted; provided that:

- (1) An area must not be designated as a smoking area if smoking in that area is prohibited by this Chapter 18A; by any other law, ordinance or regulation or by a fire marshal.
- |     |   |   |   |   |   |   |   |   |
|-----|---|---|---|---|---|---|---|---|
| (2) | * | * | * | * | * | * | * | * |
| (3) | * | * | * | * | * | * | * | * |
| (4) | * | * | * | * | * | * | * | * |

### Sec. 18A-7. Smoking in eating and drinking establishments.

(a) *Definitions.* In this section, the following words have the meaning indicated:

- (1) "Bar" means an indoor, enclosed area where the primary activity is the service of alcoholic beverages and where the service of food is only incidental to the service of alcoholic beverages.
- (2) "Eating and drinking establishment" means a food and drink service facility or establishment open to the public and regulated under Chapter 18A. Eating and drinking establishments under this section are not clubs as defined under the state alcoholic beverage control laws.
- (3) "Enclosed" means separated by walls or partitions and under roof.
- (4) "Indoor" means covered by a roof and enclosed.
- (5) "Private function" means an event in an enclosed area to which entry is not available to the general public but only to those whom the sponsor of the event invites.

"Private function" does not mean an event held by a private club or association to which members of the general public are invited.

(b) *Applicability*

(1) This section applies to eating and drinking establishments [if the total seating capacity of all non-bar areas is fifty (50) or more].

(2) This section does not apply to any area of an eating and drinking establishment that is: [a bar; or] being used exclusively for a private function or is a private club as defined under the state alcoholic beverage control laws which has a private club license for consumption on premises.

[(c) *Nonsmoking area required.* A person who operates an eating and drinking establishment must designate a contiguous, nonsmoking area that is at least fifty (50) percent of the total seating area of that part of the establishment that is not: a bar; or being used exclusively for a private function].

[(d)] (c) *Notice.* Any person who operates an eating and drinking establishment subject to this section must:

(1) Post conspicuously at each entrance a sign stating that [a nonsmoking area is available;] smoking is not permitted on premises.

[(2)] (2) Ask whether each patron wants to be seated in the smoking or nonsmoking area;]

[(3)] (2) Refuse to seat or serve a person who smokes [in the nonsmoking area]; and

[(4)] (3) Ask a person who smokes [in a nonsmoking area] on the indoor premises to leave the establishment if the person continues to smoke after proper warning.

\_\_\_\_[(e)] (d) *Prohibition.* A person must not smoke in:

(1) [An area that is designated for nonsmoking under this section]; Any portion of the indoor premises of an eating and drinking establishment; or

(2) Any restroom that is open to customers.

[(f)] (e) *Enforcement and penalty.*

(1) A person who operates an eating and drinking establishment in violation of any provision of this section may be punished pursuant to the provisions of section 18A-12.

(2) A person who smokes in a nonsmoking area in violation of this section may be punished pursuant to the provisions of section 18A-12.



\* \* \* \* \*

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2004 by the City Council of Gaithersburg, Maryland.

\_\_\_\_\_  
SIDNEY A. KATZ, MAYOR and  
President of the Council

DELIVERED to the Mayor of the City of Gaithersburg, Maryland this \_\_\_\_\_ day of \_\_\_\_\_, 2004. APPROVED by the Mayor of the City of Gaithersburg, this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
SIDNEY A. KATZ, MAYOR

THIS IS TO CERTIFY that the foregoing ordinance as adopted by the City Council of Gaithersburg, in public meeting assembled, on the \_\_\_\_\_ day of \_\_\_\_\_, 2004, and that the same was approved by the Mayor of the City of Gaithersburg on the \_\_\_\_\_ day of \_\_\_\_\_, 2004. This \_\_\_\_\_ day of \_\_\_\_\_, 2004. This Ordinance will become effective on the \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
David B. Humpton, City Manager

Smoking and Tobacco Ordinance I

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO AMEND CHAPTER 18A OF THE  
CITY CODE ENTITLED "SMOKING AND TOBACCO PRODUCTS  
PLACEMENT" SECTION 18A-2 ENTITLED "SMOKING  
PROHIBITED IN CERTAIN AREAS" SECTION 18A-3 ENTITLED  
"EXCEPTIONS", SECTION 18A-6 ENTITLED "DESIGNATED SMOKING  
AREAS" AND SECTION 18A-7 ENTITLED "SMOKING IN EATING AND  
DRINKING ESTABLISHMENTS" SO AS TO PROHIBIT  
SMOKING IN EATING AND DRINKING ESTABLISHMENTS  
IN THE CITY, EXCEPT PRIVATE CLUBS AND WITH STANDARDS  
FOR DEFERRALS OF EFFECTIVE DATE FOR CERTAIN ESTABLISHMENTS  
AND FURTHER TO RENUMBER CERTAIN SUBSECTION NUMBERS

BE IT ORDAINED, by the Mayor and City Council of the City of Gaithersburg, Maryland, in  
public meeting assembled that Chapter 18A of the City Code, Section 18A-2, 18A-3, 18A-6 and  
18A-7 are hereby amended to read as follows:

**CHAPTER 18A. SMOKING AND TOBACCO PRODUCTS PLACEMENT**

\* \* \* \* \*

**Sec. 18A-2. Smoking prohibited in certain areas.**

A person must not smoke in any:

- |      |   |   |   |   |   |   |   |   |
|------|---|---|---|---|---|---|---|---|
| (1)  | *   | * | * | * | * | * | * | * |
| (2)  | *   | * | * | * | * | * | * | * |
| (3)  | *   | * | * | * | * | * | * | * |
| (4)  | *   | * | * | * | * | * | * | * |
| (5)  | *   | * | * | * | * | * | * | * |
| (6)  | *   | * | * | * | * | * | * | * |
| (7)  | *   | * | * | * | * | * | * | * |
| (8)  | Public areas of a retail store, <u>eating and drinking establishment</u> , bank, factory or any<br>other private business, except:<br>[a. An eating and drinking establishment, except as provided in section 18A-7 of<br>this chapter:]<br>[b] <u>a.</u> * * * * *<br>[c] <u>b.</u> * * * * *<br>[d] <u>c.</u> * * * * * |   |   |   |   |   |   |   |
| (9)  | *   | * | * | * | * | * | * | * |
| (10) | *   | * | * | * | * | * | * | * |
| (11) | *   | * | * | * | * | * | * | * |
| (12) | *   | * | * | * | * | * | * | * |

### Sec. 18A-3. Exceptions.

Smoking is permitted:

- |     |   |   |   |   |   |   |   |   |
|-----|---|---|---|---|---|---|---|---|
| (1) | * | * | * | * | * | * | * | * |
| (2) | * | * | * | * | * | * | * | * |
| (3) | * | * | * | * | * | * | * | * |
| (4) | * | * | * | * | * | * | * | * |
| (5) | * | * | * | * | * | * | * | * |
| (6) | * | * | * | * | * | * | * | * |
| (7) | * | * | * | * | * | * | * | * |
| (8) | * | * | * | * | * | * | * | * |

(9) In the bar or dining area of a club as the term "club" is defined in the state alcoholic beverage law and the club has an alcoholic beverage license issued to private clubs under the state alcoholic beverages law which allows consumption of alcoholic beverages on the premises.

### Sec. 18A-6. Designated smoking areas.

The person in charge of any area specified in section 18A-2 may designate separate areas where smoking is permitted; provided that:

- (1) An area must not be designated as a smoking area if smoking in that area is prohibited by this Chapter 18A; by any other law, ordinance or regulation or by a fire marshal.
- |     |   |   |   |   |   |   |   |   |
|-----|---|---|---|---|---|---|---|---|
| (2) | * | * | * | * | * | * | * | * |
| (3) | * | * | * | * | * | * | * | * |
| (4) | * | * | * | * | * | * | * | * |

### Sec. 18A-7. Smoking in eating and drinking establishments.

(a) *Definitions.* In this section, the following words have the meaning indicated:

- (1) "Bar" means an indoor, enclosed area where the primary activity is the service of alcoholic beverages and where the service of food is only incidental to the service of alcoholic beverages.
- (2) "Eating and drinking establishment" means a food and drink service facility or establishment open to the public and regulated under Chapter 18A. Eating and drinking establishments under this section are not clubs as defined under the state alcoholic beverage control laws.
- (3) "Enclosed" means separated by walls or partitions and under roof.
- (4) "Indoor" means covered by a roof and enclosed.

- (5) "Private function" means an event in an enclosed area to which entry is not available to the general public but only to those whom the sponsor of the event invites. "Private function" does not mean an event held by a private club or association to which members of the general public are invited.

- (6) "Separate ventilation system" means a mechanical HVAC unit which vents directly outdoors, is not interconnected to the system operating in non-smoking areas and is an approved system as defined in the Building Code.

(b) *Applicability.*

- (1) This section applies to eating and drinking establishments [if the total seating capacity of all non-bar areas is fifty (50) or more].
- (2) This section does not apply to any area of an eating and drinking establishment that is: [a bar; or] being used exclusively for a private function or is a private club as defined under the state alcoholic beverage control laws which has a private club license for consumption on premises.

- [(c) *Nonsmoking area required.* A person who operates an eating and drinking establishment must designate a contiguous, nonsmoking area that is at least fifty (50) percent of the total seating area of that part of the establishment that is not: a bar; or being used exclusively for a private function].

[(d)] (c) *Notice.* Any person who operates an eating and drinking establishment subject to this section must:

- (1) Post conspicuously at each entrance a sign stating that [a nonsmoking area is available;] smoking is not permitted on premises.

[(2)] Ask whether each patron wants to be seated in the smoking or nonsmoking area;]

[(3)] (2) Refuse to seat or serve a person who smokes [in the nonsmoking area]; and

[(4)] (3) Ask a person who smokes [in a nonsmoking area] on the indoor premises to leave the establishment if the person continues to smoke after proper warning.

[(e)] (d) *Prohibition.* A person must not smoke in:

- (1) [An area that is designated for nonsmoking under this section]; Any portion of the indoor premises of an eating and drinking establishment; or

(2) Any restroom that is open to customers.

~~[(f)]~~ (e) *Enforcement and penalty.*

- (1) A person who operates an eating and drinking establishment in violation of any provision of this section may be punished pursuant to the provisions of section 18A-12.
- (2) A person who smokes in a nonsmoking area in violation of this section may be punished pursuant to the provisions of section 18A-12.

\* \* \* \* \*

BE IT FURTHER ORDAINED, by the Mayor and City Council of the City of Gaithersburg, Maryland that this ordinance shall become effective at the expiration of twenty (20) calendar days following approval by the Mayor, except that for those eating and drinking establishments meeting the following standards the effective date of this ordinance shall be deferred for twelve (12) calendar months following the date of approval of this Ordinance by the Mayor.

Standards for Deferral of Effective Date of Ordinance

The eating and drinking establishment must:

- (1) Be in operation and open for business with a valid use and occupancy certificate; and
- (2) The establishment contains as of the date of approval of this Ordinance by the Mayor:
  - a. A separate smoking area which is enclosed on all sides from floor to ceiling by solid walls with self closing doors used for ingress and egress and has a separate ventilation system; and
  - b. To the extent possible is not located in an area that patrons must pass through to use restrooms or be seated in the non-smoking areas of the establishment.
- (3) Within twenty (20) days from the date of approval of this Ordinance by the Mayor, the owner or operator of the eating and drinking establish must apply to the City Manager or his designee for deferral of the Ordinance and request certification by the City of compliance with these deferral standards. Within ten (10) days from timely receipt of said application for certification, the City Manager or his designee must certify or deny certification of the establishment.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2004 by the City Council of Gaithersburg, Maryland.

\_\_\_\_\_  
SIDNEY A. KATZ, MAYOR and  
President of the Council

DELIVERED to the Mayor of the City of Gaithersburg, Maryland this \_\_\_\_\_ day of \_\_\_\_\_, 2004. APPROVED by the Mayor of the City of Gaithersburg, this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
SIDNEY A. KATZ, MAYOR

THIS IS TO CERTIFY that the foregoing ordinance as adopted by the City Council of Gaithersburg, in public meeting assembled, on the \_\_\_\_\_ day of \_\_\_\_\_, 2004, and that the same was approved by the Mayor of the City of Gaithersburg on the \_\_\_\_\_ day of \_\_\_\_\_, 2004. This \_\_\_\_\_ day of \_\_\_\_\_, 2004. This Ordinance will become effective on the \_\_\_\_\_ day of \_\_\_\_\_, 2004, except as noted above for establishments containing certain improvements, in which case, this Ordinance will become effective on the \_\_\_\_\_ day of \_\_\_\_\_ 2005.

\_\_\_\_\_  
David B. Humpton, City Manager

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO AMEND CHAPTER 18A OF THE  
CITY CODE ENTITLED "SMOKING AND TOBACCO PRODUCTS  
PLACEMENT" SECTION 18A-3 ENTITLED  
"EXCEPTIONS", SECTION 18A-6 ENTITLED "DESIGNATED SMOKING  
AREAS" AND SECTION 18A-7 ENTITLED "SMOKING IN EATING AND  
DRINKING ESTABLISHMENTS" SO AS TO PROHIBIT  
SMOKING IN EATING AND DRINKING ESTABLISHMENTS  
IN THE CITY EXCEPT UNDER SPECIFIED REQUIREMENTS  
AND CONDITIONS, EXEMPT PRIVATE CLUBS AND FURTHER  
TO RENUMBER CERTAIN SUBSECTION NUMBERS AND  
ADD APPROPRIATE DEFINITIONS

BE IT ORDAINED, by the Mayor and City Council of the City of Gaithersburg, Maryland, in  
public meeting assembled that Chapter 18A of the City Code, Sections 18A-3, 18A-6 and 18A-7 are  
hereby amended to read as follows:

**CHAPTER 18A. SMOKING AND TOBACCO PRODUCTS PLACEMENT**

\* \* \* \* \*

**Sec. 18A-3. Exceptions.**

Smoking is permitted:

- |     |   |   |   |   |   |   |   |   |
|-----|---|---|---|---|---|---|---|---|
| (1) | * | * | * | * | * | * | * | * |
| (2) | * | * | * | * | * | * | * | * |
| (3) | * | * | * | * | * | * | * | * |
| (4) | * | * | * | * | * | * | * | * |
| (5) | * | * | * | * | * | * | * | * |
| (6) | * | * | * | * | * | * | * | * |
| (7) | * | * | * | * | * | * | * | * |
| (8) | * | * | * | * | * | * | * | * |

(9) In the bar or dining area of a club as the term "club" is defined in the state alcoholic beverage law and the club has an alcoholic beverage license issued to private clubs under the state alcoholic beverages law which allows consumption of alcoholic beverages on the premises.

(10) In an eating and drinking establishment certified by the City Manager or his designee as conforming to the standards and requirements of Section 18A-7 of this Chapter.

**Sec. 18A-6. Designated smoking areas.**

The person in charge of any area specified in section 18A-2 may designate separate areas where smoking is permitted; provided that:

- (1) An area must not be designated as a smoking area if smoking in that area is prohibited by this Chapter 18A; by any other law, ordinance or regulation or by a fire marshal.
- (2) \* \* \*
- (3) \* \* \*
- (4) \* \* \*

**Sec. 18A-7. Smoking in eating and drinking establishments.**

(a) *Definitions.* In this section, the following words have the meaning indicated:

- (1) "Bar" means an indoor, enclosed area where the primary activity is the service of alcoholic beverages and where the service of food is only incidental to the service of alcoholic beverages.

(2) "Designated Smoking Area" means that enclosed area in an eating and drinking establishment that complies with the standards and requirements of subsection (c) of this Section.

[(2)](3) "Eating and drinking establishment" means a food and drink service facility or establishment open to the public and regulated under Chapter 18A. Eating and drinking establishments under this section are not clubs as defined under the state alcoholic beverage control laws.

[(3)] (4) "Enclosed" means separated by walls or partitions and under roof.

[(4)] (5) "Indoor" means covered by a roof and enclosed.

[(5)] (6) "Private function" means an event in an enclosed area to which entry is not available to the general public but only to those whom the sponsor of the event invites. "Private function" does not mean an event held by a private club or association to which members of the general public are invited.

(7) "Separate ventilation system" means a mechanical HVAC unit which vents directly outdoors, is not interconnected to the system operating in non-smoking areas and is an approved system as defined in the Building Code.



(b) *Applicability.*

- (1) This section applies to eating and drinking establishments [if the total seating capacity of all non-bar areas is fifty (50) or more].
- (2) This section does not apply to any area of an eating and drinking establishment that is: [a bar; or] being used exclusively for a private function or is a club as defined under the state alcoholic beverage control laws which has a private club license for consumption on premises or is certified by the City Manager or his designee as meeting the standards and requirements of subsection (c) of this Section 18A-7.

[(c) *Nonsmoking area required.* A person who operates an eating and drinking establishment must designate a contiguous, nonsmoking area that is at least fifty (50) percent of the total seating area of that part of the establishment that is not: a bar; or being used exclusively for a private function].

(c) *Designated smoking area.* A designated smoking area may be maintained in an eating and drinking establishment which is certified by the City Manager or his designee as complying with the following standards and requirements within twelve (12) months from the effective date of this Ordinance:

- (i) The eating and drinking establishment is in operation and open for business with a valid use and occupancy certificate; and
- (ii) The establishment contains a separate designated smoking area which is not a restroom and which is enclosed on all sides from floor to ceiling by solid walls with self closing doors used for ingress and egress; and
- (iii) That the separate designated smoking area has a separate ventilation system; and
- (iv) The designated smoking area is not located in an area that patrons must pass through to use restrooms or be seated in the non-smoking areas of the establishments.

(d) *Notice.* Any person who operates an eating and drinking establishment subject to this section must:

- (1) Post conspicuously at each entrance a sign stating that a designated [non]smoking area is available; or that smoking is not permitted anywhere on premises.
- (2) Ask whether each patron wants to be seated in the smoking or nonsmoking area; if the establishment contains an approved designated smoking area.

(3) Refuse to seat or serve a person who smokes except in an approved designated smoking area [in the nonsmoking area]; and

(4) Ask a person who smokes in a nonsmoking area in the indoor premises to leave the establishment if the person continues to smoke after proper warning.

(e) *Prohibition.* A person must not smoke in:

(1) An area that is designated for nonsmoking under this section; or

(2) Any restroom that is open to customers.

(f) *Enforcement and penalty.*

(1) A person who operates an eating and drinking establishment in violation of any provision of this section may be punished pursuant to the provisions of section 18A-12.

(2) A person who smokes in a nonsmoking area in violation of this section may be punished pursuant to the provisions of section 18A-12.

\* \* \* \* \*

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2004 by the City Council of Gaithersburg, Maryland.

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SIDNEY A. KATZ, MAYOR and  
President of the Council

DELIVERED to the Mayor of the City of Gaithersburg, Maryland this \_\_\_\_\_ day of \_\_\_\_\_, 2004. APPROVED by the Mayor of the City of Gaithersburg, this \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
SIDNEY A. KATZ, MAYOR

THIS IS TO CERTIFY that the foregoing ordinance as adopted by the City Council of Gaithersburg, in public meeting assembled, on the \_\_\_\_\_ day of \_\_\_\_\_, 2004, and that the same was approved by the Mayor of the City of Gaithersburg on the \_\_\_\_\_ day of \_\_\_\_\_, 2004. This \_\_\_\_\_ day of \_\_\_\_\_, 2004. This Ordinance will become effective on the \_\_\_\_\_ day of \_\_\_\_\_, 2004.

\_\_\_\_\_  
David B. Humpton, City Manager

Smoking and Tobacco Ordinance III

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO AMEND CHAPTER 2 OF THE CITY CODE, ENTITLED "ADMINISTRATION," ARTICLE II, ENTITLED "MUNICIPAL-COUNTY RELATIONS," SECTION 2-6 THEREOF, ENTITLED "EXEMPTION FROM MONTGOMERY COUNTY LEGISLATION AND REGULATIONS WITHIN THE CITY" SO AS TO INCLUDE THE PROVISIONS OF CHAPTER 24 OF THE MONTGOMERY COUNTY CODE, SECTIONS 24-9B ENTITLED "AVAILABILITY OF TOBACCO PRODUCTS TO MINORS" SECTION 24-9C "DISTRIBUTION OF TOBACCO PRODUCTS TO MINORS" AND SECTION 24-9D ENTITLED "TOBACCO PRODUCTS PLACEMENT," AS BEING APPLICABLE AND ENFORCEABLE WITHIN THE CITY

BE IT ORDAINED, by the Mayor and City Council of the City of Gaithersburg, in public meeting assembled, that Chapter 2 of the City Code, entitled "administration", Article II, entitled "Municipal-County Relations", Section 2-6 thereof, is hereby amended to read as follows:

CHAPTER 2  
ADMINISTRATION

\* \* \* \*

ARTICLE II. MUNICIPAL-COUNTY RELATIONS

Sec. 2-6. Exemption from Montgomery County legislation and regulation within the City.

It is hereby ordained by the Mayor and City Council of the City of Gaithersburg, Maryland, that pursuant to the authority granted by Article 23A, Section 2B(a), of the Annotated Code of Maryland, as enacted by Chapter 398 of the Laws of Maryland, 1983, and further pursuant to Chapter 33 of the Laws of Montgomery County, 1984, as codified in Chapter 2, Section 2-96 of the Montgomery County Code (1972 edition, as amended), as may hereafter from time to time be amended, the City of Gaithersburg, Maryland, is hereby declared exempt from any and all legislation and regulations pertaining hereto, heretofore or hereafter enacted by Montgomery County, Maryland, relating to any subject or matter upon which the Mayor and City Council of the City, or the City of Gaithersburg, as a municipal corporation, has been heretofore or is hereafter granted legislative authority, with the following exceptions which shall hereafter be applicable to and within the City of Gaithersburg, Maryland.

Chapter Title, Montgomery County Code 1984, as amended:

Chapter 1 - General Provisions

\* \* \* \*

Chapter 24 - Health and Sanitation, Sec. 24-9, Sec. 24-9B, Sec. 24-9C and Sec. 24-9D

\* \* \* \*

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2003, by the City Council of Gaithersburg, Maryland.

\_\_\_\_\_  
Sidney A. Katz, Mayor and  
President of the Council

DELIVERED to the Mayor of the City of Gaithersburg, Maryland, this \_\_\_\_\_ day of July, 2003. APPROVED/VETOED by the Mayor of the City of Gaithersburg, this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
Sidney A. Katz, Mayor

THIS IS TO CERTIFY that the foregoing Ordinance was Adopted by the City Council of Gaithersburg, in public Meeting assembled, on the \_\_\_\_\_ day of \_\_\_\_\_, 2003, And that the same was approved/vetoed by the Mayor of the City of Gaithersburg on the \_\_\_\_\_ day of \_\_\_\_\_, 2003. This Ordinance will become effective on the \_\_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
David B. Humpton, City Manager

<b>Boldface</b>	<i>Heading or defined term.</i>
<u>Underling</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by Amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
***	<i>Existing law unaffected by bill.</i>

ORDINANCE NO. \_\_\_\_\_

AN ORDINANCE TO REPEAL CHAPTER 18A  
ENTITLED "SMOKING AND TOBACCO PRODUCTS  
PLACEMENT" SECTION 18A-1 THROUGH 18A-12 INCLUSIVE.

WHEREAS, Montgomery County, Maryland has enacted comprehensive legislation to regulate and control smoking and the use and placement of tobacco products; and

WHEREAS, the Mayor and City Council believe that it is in the best interests of the inhabitants of the City that controls and regulations pertaining to smoking and the use and placement of tobacco products are best established and enforced on a comprehensive, uniform basis; and

WHEREAS, the City desires that the local laws adopted by Montgomery County, Maryland on this subject be applied and enforced within the City limits.

NOW, THEREFORE BE IT ORDAINED, by the Mayor and City Council of the City of Gaithersburg, Maryland in public meeting assembled that Chapter 18A entitled "Smoking and Tobacco Products Placement" Sections 18A-1 through 18A-12, inclusive are hereby repealed.

ADOPTED this \_\_\_\_\_ day of \_\_\_\_\_, 2003 by the City Council of Gaithersburg, Maryland.

\_\_\_\_\_  
SIDNEY KATZ, MAYOR and  
President of the Council

DELIVERED to the Mayor of the City of Gaithersburg, Maryland, this \_\_\_\_\_ day of 2003.  
APPROVED by the Mayor of the City of Gaithersburg, this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
SIDNEY KATZ, Mayor

THIS IS TO CERTIFY that the foregoing ordinance as adopted by the City Council of Gaithersburg, in public meeting assembled, on the \_\_\_\_\_ day of \_\_\_\_\_, 2003 and that the same was approved by the Mayor of City of Gaithersburg on the \_\_\_\_\_ day of \_\_\_\_\_, 2003. This Ordinance will become effective on the \_\_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
David B. Humpton, City Manager